

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Andrew Ridge	Team: APU	CCRB Case #: 201705224	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 06/20/2017 4:00 PM	Location of Incident: inside § 87(2)(b)	Precinct: 67	18 Mo. SOL 12/20/2018	EO SOL 12/20/2018	
Date/Time CV Reported Wed, 06/21/2017 3:15 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 06/27/2017 2:17 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DT3 William Vargas	06905	942652	WARRSEC
2. DT3 Steve Richards	2920	937372	WARRSEC
3. Officers			Unknown

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT2 Marco Balboni	01237	921136	067 DET
2. SGT Lawrence Bettex	04846	893558	WARRSEC
3. POM Adam Geslak	29753	950488	ESS 07
4. POF Djenane Pierre	02093	954238	067 PCT
5. POM Yasyonfrant Jeanpierre	02796	947104	067 PCT
6. POM Kenneth Triolo	13535	957229	067 PCT
7. POM Brandon Patane	14765	961077	067 PCT
8. POM Fabian Modesto	08846	950897	067 PCT
9. POM Richard Ortega	02674	956991	067 PCT
10. SGT James Sinnott	00269	934188	067 PCT
11. POF Deirdre Kelleher	17088	957731	067 PCT
12. POF Blanca Morin	15790	957876	067 PCT
13. POM Edward Batista	13051	950056	067 PCT
14. POF Taylor Burger	29044	954581	104 PCT
15. POM John Nemeth	17897	955259	067 PCT
16. SGT Ali Javed	03782	947780	ESS 07
17. DTS Jason Jackson	7402	938704	ESS 07
18. DTS John Sylvestre	00242	931290	ESS 07
19. POM Daniel Garcia	20856	948030	ESS 07
20. DT2 Lenin Guerrero	07483	917726	ESS 07
21. DT3 Philogene Breville	1201	940974	WARRSEC

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Steve Richards	Abuse: Detective Steve Richards refused to show the arrest warrant to § 87(2)(b)	
B.DT3 Steve Richards	Abuse: Detective Steve Richards refused to show the arrest warrant to § 87(2)(b)	
C.DT3 Steve Richards	Abuse: Detective Steve Richards entered § 87(2)(b) in Brooklyn.	
D.DT3 William Vargas	Abuse: Detective William Vargas entered § 87(2)(b) in Brooklyn.	
E.DT3 Steve Richards	Abuse: Detective Steve Richards searched § 87(2)(b) in Brooklyn.	
F.DT3 William Vargas	Abuse: Detective William Vargas searched § 87(2)(b) in Brooklyn.	
G.DT3 Steve Richards	Force: Detective Steve Richards used physical force against § 87(2)(b)	
H.DT3 Steve Richards	Abuse: Detective Steve Richards threatened to arrest § 87(2)(b)	
I.DT3 Steve Richards	Force: Detective Steve Richards used physical force against § 87(2)(b)	
J.DT3 William Vargas	Force: Detective William Vargas used physical force against § 87(2)(b)	
K.DT3 William Vargas	Abuse: Detective William Vargas interfered with § 87(2)(b)'s use of a recording device.	
L. Officers	Abuse: Officers searched § 87(2)(b) in Brooklyn.	
M.DT3 William Vargas	Abuse: Detective William Vargas threatened § 87(2)(b) with the use of force.	
N.DT3 Steve Richards	Abuse: Detective Steve Richards threatened § 87(2)(b) with the use of force.	
O. Officers	Force: Officers used physical force against § 87(2)(b)	
P.DT3 William Vargas	Discourtesy: Detective William Vargas spoke discourteously to § 87(2)(b)	
Q.DT3 William Vargas	Abuse: Detective William Vargas did not obtain medical treatment for § 87(2)(b)	
R.DT3 William Vargas	Force: Detective William Vargas used physical force against § 87(2)(b)	

Summary of Complaint

On June 21st, 2017, Captain Joseph Taylor of the 70th Precinct reported a portion of this complaint to the IAB Command Center by phone. IAB forwarded the complaint to the CCRB, where it was received on June 27th, 2017. On June 21st, 2017, § 87(2)(b) reported another portion of this complaint to the IAB Command Center by phone. IAB forwarded the complaint to the CCRB, where it was received on July 27th, 2017.

On June 20th, 2017, at approximately 4:00PM, § 87(2)(b) and § 87(2)(b) were at home at § 87(2)(b) in Brooklyn, when Det. Steve Richards of the Brooklyn South Warrant Section refused to show § 87(2)(b) and § 87(2)(b) a warrant (**Allegations A and B: Abuse of Authority, § 87(2)(g)**). Det. Richards and Det. William Vargas of the Brooklyn South Warrant Section entered and searched the house (**Allegations C-F: Abuse of Authority, § 87(2)(g)**). As Det. Richards entered, he pushed § 87(2)(b) (**Allegation G: Force, § 87(2)(g)**). Det. Richards threatened to arrest § 87(2)(b) (**Allegation H: Abuse of Authority, § 87(2)(g)**) and then pushed § 87(2)(b) (**Allegation I: Force, § 87(2)(g)**). Det. Vargas took hold of § 87(2)(b) and forcefully pulled down on the handcuff around § 87(2)(b)'s right wrist (**Allegation J: Force, § 87(2)(g)**) and by doing this interfered with § 87(2)(b)'s video recording of the incident (**Allegation K: Abuse of Authority, § 87(2)(g)**). Unidentified officers searched drawers throughout the house (**Allegation L: Abuse of Authority, § 87(2)(g)**).

§ 87(2)(b) who was arrested as a result of this incident, alleged that Det. Vargas and Det. Richards threatened to use force against him (**Allegations M and N: Abuse of Authority, § 87(2)(g)**) before unidentified officers used force against him (**Allegation O: Force, § 87(2)(g)**). § 87(2)(b) alleged that Det. Vargas spoke discourteously to him (**Allegation P: Discourtesy, § 87(2)(g)**), refused to obtain medical treatment for him (**Allegation Q: Abuse of Authority, § 87(2)(g)**) and used force against him (**Allegation R: Force, § 87(2)(g)**).

§ 87(2)(b) provided video from her cell phone which captures a portion of the incident.

Findings and Recommendations

Allegation A—Abuse of Authority: Detective Steve Richards refused to show the arrest warrant to § 87(2)(b)

Allegation B—Abuse of Authority: Detective Steve Richards refused to show the arrest warrant to § 87(2)(b)

§ 87(2)(b) testified that on June 20th, 2017, at 4:00PM, he was at home inside § 87(2)(b) in Brooklyn, which is a private house where he lives with his sister, § 87(2)(b) when he heard the doorbell ring. (BR01). § 87(2)(b) opened the front door and saw Det. Richards and Det. Vargas who told § 87(2)(b) that they needed to search his house. § 87(2)(b) asked Det. Richards if he had a warrant. Det. Richards told § 87(2)(b) that he did not need a warrant. No one ever showed § 87(2)(b) a warrant.

§ 87(2)(b) testified that she heard yelling downstairs and after a few minutes went to the front door. (BR02). § 87(2)(b) asked Det. Richards and Det. Vargas where their warrant was and who they were looking for. Det. Richards and Det. Vargas did not say why

they were there and entered the house. After Det. Richards entered, § 87(2)(b) yelled “Where’s your warrant,” but Det. Richards ignored her. Eventually, Det. Breville arrived on scene and showed § 87(2)(b) a bench warrant for her boyfriend, § 87(2)(b). No allegation was pleaded against Det. Vargas as both he and Det. Richards testified that only Det. Richards was in possession of the bench warrant.



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Video of the incident indicates that both § 87(2)(b) and § 87(2)(b) ask Det. Richards to show them the warrant. (BR03). At the 1:20 minute mark, Det. Vargas can be heard responding to § 87(2)(b)s and § 87(2)(b)s questions about the warrant, but the audio is indistinct. Aside from that moment, the detectives have no response to questions about the warrant.

Det. Richards testified that § 87(2)(b) opened the front door and that he told § 87(2)(b) that there was a specific person he was looking for and showed her the bench warrant (BR04). § 87(2)(b) was near the door and speaking, but Det. Richards did not pay attention to him because he was focused on apprehending § 87(2)(b) the subject of the bench warrant. After viewing the video during his CCRB interview, Det. Richards testified that although he had shown § 87(2)(b) the bench warrant, she had not looked at it.

Det. Vargas testified that he arrived at the front door of the house shortly after Det. Richards, and that when he arrived at the door, Det. Richards told him that he had already shown the bench warrant to the civilians. (BR05). Several civilians in the house were yelling and saying there was no warrant, even after Det. Richards told them that he had already shown it to them.

§ 87(2)(b), § 87(2)(g)

Allegation C—Abuse of Authority: Detective Steve Richards entered § 87(2)(b) in Brooklyn.

Allegation D— Abuse of Authority: Detective William Vargas entered § 87(2)(b) in Brooklyn.

Allegation E—Abuse of Authority: Detective Steve Richards searched § 87(2)(b) in Brooklyn.

Allegation F— Abuse of Authority: Detective William Vargas searched § 87(2)(b) in Brooklyn.

§ 87(2)(b) testified that after Det. Richards told him that he did not need a warrant, Det. Richards entered the house and was followed by Det. Vargas. (BR01). § 87(2)(b) had the door opened halfway as he spoke with the detectives. § 87(2)(b) never told Det. Richards and Det. Vargas that they could enter and in no way gestured to them to indicate that they could enter.

§ 87(2)(b) testified that § 87(2)(b) does not live at § 87(2)(b) but sometimes visits his son there.

§ 87(2)(b) testified that she did not hear § 87(2)(b) tell Det. Richards and Det. Vargas that they could enter, nor did she believe that either detective asked to come inside before they entered. (BR02). § 87(2)(b)'s testimony regarding § 87(2)(b) not living in her house was consistent with that provided by § 87(2)(b).

Throughout the course of the video provided by § 87(2)(b) both § 87(2)(b) and § 87(2)(b) can be heard telling Det. Richards and Det. Vargas to leave the house. (BR03).

Det. Richards testified that about 20 minutes after he and Det. Vargas arrived on scene to conduct surveillance for Det. Philogene Breville's case, § 87(2)(b) came out of the house to bring a dog inside. (BR04). Neither Det. Richards nor Det. Vargas said anything to § 87(2)(b) before he went back inside the house, nor did either detective do anything to alert § 87(2)(b) to their presence outside of the house. § 87(2)(b) was wanted for a felonious assault, and Det. Richards was in possession of a bench warrant for § 87(2)(b). The house at which he and Det. Vargas were conducting surveillance was § 87(2)(b)'s house and not § 87(2)(b)'s home address. Det. Richards testified that as long as a MOS has confirmation that the subject of a bench warrant is inside a location, that confirmation provides the MOS with the power to execute the bench warrant absent consent, regardless of the location in question. § 87(2)(b) verbally denied Det. Richards entry to her house and physically blocked the door, but Det. Richards and Det. Vargas went around § 87(2)(b) and entered in pursuit of § 87(2)(b) despite the lack of consent.

§ 87(2)(g)
Det. Vargas testified that by the time he reached the front door of the house, the front door was already opened and Det. Richards was already inside. (BR05). Det. Vargas did not testify to any resistance to his entry into the house, but was consistent with Det. Richards' testimony that consent was an unnecessary condition for entry.

The bench warrant for § 87(2)(b) lists his home address as § 87(2)(b) in Brooklyn. (BR06). § 87(2)(b) does not appear anywhere on the bench warrant.

Det. Breville, the detective assigned the case, testified that § 87(2)(b) and not § 87(2)(b) lived at § 87(2)(b). (BR27).

A bench warrant alone does not give officers the authority to enter a third-party residence. Steagald v. United States, 451 U.S. 204 (1981). In Steagald, the United States Supreme Court held that when drug enforcement officers entered a third-party residence to search for the subject of an arrest warrant without first obtaining a search warrant—in the absence of consent and exigent circumstances—they violated the third-party's Fourth Amendment rights. (BR07).

§ 87(2)(b), § 87(2)(g)
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Allegation G—Force: Detective Steve Richards used physical force against § 87(2)(b)

§ 87(2)(b) testified that at the front door, Det. Richards took hold of his upper-left arm and pushed him out of the way as he entered the house. (BR01). § 87(2)(b) did not allege sustaining any injury as a result of this use of force.

§ 87(2)(b) testified that either Det. Richards or Det. Vargas pushed § 87(2)(b) who had been blocking the doorway with one of his arms, such that he was no longer in the way of the detectives entering the house. (BR02). Besides moving backwards when he was pushed, § 87(2)(b) had no reaction to this use of force against him.

Det. Richards testified that he only moved around § 87(2)(b) to enter the house, and that § 87(2)(b) was somewhere near the door, but at no point physically prevented him from entering. (BR04).

Det. Vargas testified that he could not remember if Det. Richards made physical contact with § 87(2)(b) (BR05).

PO Pierre testified that she went inside the house with Det. Vargas and Det. Richards. (BR08). As Det. Vargas and Det. Richards made their way up the stairs, § 87(2)(b) blocked their path with his body. Det. Vargas and Det. Richards made no physical contact with § 87(2)(b) and went past him up the stairs.

§ 87(2)(b), § 87(2)(g)
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Allegation H—Abuse of Authority: Detective Steve Richards threatened to arrest

§ 87(2)(b)

During her initial phone statement, § 87(2)(b) testified that at some point during the incident, Det. Richards threatened her with arrest, but did not make this allegation during her in-person interview. (BR02). As Det. Richards ascended the stairs, § 87(2)(b) blocked him with her body. Det. Richards pushed her out of the way after requesting she move multiple times.

Det. Richards testified that at the front door of the house, he asked § 87(2)(b) to step aside. (BR04). Det. Richards went to § 87(2)(b)'s left in order to go past her and enter the house, but she moved her body to block him. Det. Richards told § 87(2)(b) that if she blocked him again, he would place her under arrest for obstructing governmental administration because there was a wanted felon inside the house whom he needed to apprehend. After saying this, Det. Richards quickly went to the right of § 87(2)(b) and moved past her into the house. § 87(2)(b) again blocked Det. Richards on the stairs, and he again told her that she could be arrested for obstructing governmental administration. After Det. Richards said this, § 87(2)(b) stopped blocking him, and Det. Richards moved around her and further up the stairs.

Det. Vargas testified that when Det. Richards attempted to ascend the stairs, § 87(2)(b) blocked him with her body. (BR05). Det. Richards told § 87(2)(b) that she could be arrested for obstructing government administration, and then moved around § 87(2)(b) and continued up the stairs.

NYS Penal Law 195.05 stipulates that “a person is guilty of obstructing governmental administration when he intentionally obstructs ... a public servant from performing an official function, by means of intimidation, physical force or interference.” (BR09).

People v. Perez, 47 A.D.3d 1192 established that an individual refusing an officer's request to open his door was an exercise of his "right to be let alone" and right to refuse to respond to police inquiry. (BR26).

§ 87(2)(b), § 87(2)(g)

Allegation I—Force: Detective Steve Richards used physical force against § 87(2)(b)

§ 87(2)(b) testified that when Det. Richards reached her spot on the stairs, he told her to move out of the way. (BR02). § 87(2)(b) told Det. Richards that only he could go upstairs, and that she did not want the other officers to go upstairs and scare her elderly grandmother. Det. Richards again told § 87(2)(b) that she needed to move out of the way. At this time § 87(2)(b) was holding her § 87(2)(b) old son in her right arm. Det. Richards pushed § 87(2)(b)'s left arm. § 87(2)(b) caught herself with her right arm on the wall. § 87(2)(b) did not allege any injury to herself or her son as a result of this use of force.

§ 87(2)(b)'s testimony regarding this allegation was essentially consistent with that provided by § 87(2)(b) (BR01).

In the video provided by § 87(2)(b) can be heard multiple times accusing Det. Richards of pushing her down the stairs. (BR03).

Det. Richards testified that § 87(2)(b) blocked him for a second time on the stairs and he again told her he could arrest her for obstructing governmental administration. (BR04). After Det. Richards said this, § 87(2)(b) stopped blocking him, and Det. Richards moved around her and further up the stairs. Det. Richards at no point made physical contact with § 87(2)(b). After viewing the video during his CCRB interview, Det. Richards testified that § 87(2)(b) was just saying that he pushed her for the video.

Det. Vargas testified that as soon as Det. Richards moved around § 87(2)(b) she began to yell that Det. Richards had pushed her. (BR05). Det. Vargas did not see Det. Richards make any physical contact with § 87(2)(b).

§ 87(2)(b), § 87(2)(g)

Allegation J—Force: Detective William Vargas used physical force against § 87(2)(b)

Allegation K—Abuse of Authority: Detective William Vargas interfered with § 87(2)(b)'s use of a recording device.

§ 87(2)(b) testified that as Det. Vargas and Det. Richards looked through the rooms of the second floor of the house, he began to film them with § 87(2)(b)'s cell phone (BR01). As § 87(2)(b) filmed Det. Vargas and Det. Richards, Det. Vargas put a handcuff around § 87(2)(b)'s right wrist and forcefully pulled on the other side of the handcuffs. § 87(2)(b) alleged that this action resulted in breaking his arm and wrist.

§ 87(2)(b)'s medical records from a visit to § 87(2)(b) on § 87(2)(b) indicate that § 87(2)(b)'s chief complaint was right hand pain. (BR10, privileged document). § 87(2)(b) was diagnosed with a fractured right wrist.

§ 87(2)(b)'s testimony was consistent with § 87(2)(b)'s that Det. Vargas pulled down on the free end of the handcuffs. § 87(2)(b) testified that before Det. Vargas did this, he told § 87(2)(b) once to put his arm down.

The video provided by § 87(2)(b) captures § 87(2)(b) coming within inches of officers' faces, and making physical contact with Det. Richards' forehead. (BR03). Early in the video, § 87(2)(b) comes within inches of PO Pierre's, PO Richards', and Det. Vargas' faces. At the 00:46 minute mark, Det. Vargas tells § 87(2)(b) to go wait downstairs, but § 87(2)(b) refuses. At the 1:47 mark, Det. Vargas asks § 87(2)(b) to go downstairs a second time. At this point, § 87(2)(b) is standing approximately two feet from Det. Vargas. At the 1:51 minute mark, § 87(2)(b) is still standing two feet away from Det. Vargas, when Det. Vargas reaches towards the camera, causing the image to go out of focus shortly before the video ends.

Det. Vargas testified that as he searched the second floor of the house, he discovered that the door to one of the rooms was locked and believed that § 87(2)(b) was inside. (BR05). As Det. Vargas worked to get the door open, § 87(2)(b) used a raised voice to curse at him and moved close to Det. Vargas. Det. Vargas told § 87(2)(b) numerous times to step back and go downstairs. § 87(2)(b) stepped back but eventually got close to Det. Vargas again.

Det. Vargas testified that he decided to place § 87(2)(b) in handcuffs to have him removed from the house. Det. Vargas took hold of one of § 87(2)(b)'s arms and told him to put his hands behind his back, but § 87(2)(b) did not comply. § 87(2)(b) began to move his hands outward and forward in front of him. § 87(2)(b) did not do anything else to resist. Det. Vargas was able to secure § 87(2)(b) in handcuffs. Det. Vargas did not think the handcuffs were ever dangling from one of § 87(2)(b)'s arms, and Det. Vargas never pulled on the handcuffs.

During his interview at CCRB, after viewing the video provided by § 87(2)(b) Det. Richards testified that the video captures him going down the stairs to the first floor of the house prior the camera going out of focus, so he did not witness what occurred between Det. Vargas and § 87(2)(b).

§ 87(2)(g)
PO Modesto testified that after he arrived on scene, he entered the house and saw that Det. Vargas was attempting to place § 87(2)(b) in handcuffs. (BR11). PO Modesto took § 87(2)(b)'s other arm. § 87(2)(b) only resisted by refusing to put his hands behind his back.

Patrol Guide 221-02 states that officers must "apply no more than the reasonable force necessary to gain control" in police incidents. (BR12).

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§ 87(2)(b), § 87(2)(g)

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Legal Bureau Bulletin, Vol. 26, No. 2 indicates that individuals have a right to lawfully record police activity but they may not intrude upon an officer's zone of safety. (BR13). The zone of safety is, at minimum, the span of the officer's arms as he engages in enforcement activity. An individual who encroaches on the zone of safety and refuses orders to move back may be handcuffed and charged with obstruction of governmental administration.

§ 87(2)(b), § 87(2)(g)

Allegation L—Abuse of Authority: Officers searched § 87(2)(b) in Brooklyn.

§ 87(2)(b) testified that when he returned to the house, he saw that clothes and other objects that had been in the drawers of the rooms were strewn all over the floor, and the drawers were left open. (BR01). § 87(2)(b)'s testimony regarding this allegation was consistent with that provided by § 87(2)(b) (BR02).

Det. Breville testified that after arriving on scene, he assisted Det. Vargas and Det. Richards search the house for § 87(2)(b) but did not open any drawers (BR16). At some point, Det. Richards informed Det. Breville that earlier he had recovered a firearm from the location, but provided Det. Breville with no additional information.

Sgt. Bettex testified that the rooms inside the house were not tidy and many objects were strewn about the floor. (BR 17). Sgt. Bettex did not open any drawers nor did he see any officer do so.

Det. Richards testified that he saw a firearm lying directly on top of a bed which he recovered and vouchered. (BR04). Det. Richards denied searching through drawers or seeing any officer do so.

Property voucher #§ 87(2)(b) for the firearm indicates that it was vouchered by Det. Richards and that its owner was unknown. (BR18).

§ 87(2)(b), § 87(2)(g)

Allegation M—Abuse of Authority: Detective William Vargas threatened § 87(2)(b) with the use of force.

Allegation N—Abuse of Authority: Detective Steve Richards threatened § 87(2)(b) with the use of force.

Allegation O—Force: Officers used physical force against § 87(2)(b)

Allegation P—Discourtesy: Detective William Vargas spoke discourteously to § 87(2)(b)

Allegation Q—Abuse of Authority: Detective William Vargas did not obtain medical treatment for § 87(2)(b)

Allegation R—Force: Detective William Vargas used physical force against § 87(2)(b)

§ 87(2)(b) provided a phone statement but was ultimately uncooperative in providing a verified statement (BR20). Without § 87(2)(b)'s cooperation, the CCRB was unable to fully investigate the allegations § 87(2)(b) made via phone. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This case was not suitable for mediation due to arrests.
- The NYC Office of the Comptroller indicated that § 87(2)(b) filed a notice of claim regarding alleged assault, battery, false arrest, false imprisonment, intentional infliction of emotional distress, and violation of his civil rights. (BR19). § 87(2)(b) has requested to be compensated two million dollars. The NYC Office of the Comptroller responded to a request on March 16th, 2018, indicating that no notice of claim was filed by § 87(2)(b) regarding this incident. (BR25).

• § 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (BR23).
- This is the first CCRB complaint involving § 87(2)(b) (BR24).
- Det. Richards has been a MOS for 13 years, and this is the 16th CCRB complaint filed against him. (BR15). The previous 15 complaints generated a total of 28 allegations, one of which was Abuse – Premises entered and/or searched, seven of which were Force – Physical force, and one of which was Abuse – Threat of arrest. The CCRB has not substantiated any of these allegations.
- Det. Vargas has been a MOS for 11 years, and this is the seventh CCRB complaint filed against him. (BR14). The previous six complaints made generated a total of 14 allegations, four of which were Force – Physical force. The CCRB has not substantiated any of these allegations.

Squad No.: 5

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____

	Signature	Print Title & Name	Date
Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date